REMARKS/ARGUMENTS

Claims 1-21, 25-31, 35, 37, 38 and 40-47 are currently pending. Claims 1-16 were previously withdrawn from consideration. Claims 22-24, 32-34 and 36 have been cancelled by the above amendment. Claim 39 was previously cancelled. Claims 17, 25, 35 and 37-38 have been amended. Claims 40-47 have been added. No new matter has been added with this amendment. Reconsideration of this Application and entry of this Amendment is respectfully requested.

35 U.S.C. §102 Rejections

Claims 17-25 and 28-38 have been rejected under 35 U.S.C.§ 102(b) as being anticipated by US Patent 5,380,299 to Fearnot (the Fearnot patent). This rejection is respectfully traversed.

The Applicants have thoroughly considered the Examiner's remarks concerning the patentability of claims 17-25 and 28-38 over the Fearnot Patent. The Applicants have also thoroughly read the Fearnot Patent. In order for the Fearnot Patent to anticipate the invention as claimed in amended independent claims 17, 25 and 35, the Fearnot Patent must disclose, teach, or suggest each and every claimed element of the Applicants' invention, "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Referring to independent claims 17, 25 and 35, claims 17, 25 and 35 have been amended to recite the limitation of claims 22, 32 and 36, respectively. Therefore, no new matter has been added with this amendment. Claims 17, 25 and 35 have been amended to recite a stent including "at least one thin barrier layer positioned between one or more thin drug-polymer layers, wherein the at least one thin barrier layer includes a cured second polymer."

The Fearnot Patent does not disclose, teach, or suggest, a stent having at least one thin barrier layer positioned between one or more thin drug-polymer layers. The Examiner relies on col. 2 lines 10-25 (reproduced below) to teach the limitation of claims 22, 32 and 36, now added to claims 17, 25 and 35.

> The method of treating a medical device with a thrombolytic agent comprises providing a base material for the medical device along with the thrombolytic agent. The base material is treated with the thrombolytic agent to advantageously dissolve the thrombus on the surface of the medical device. The base material is advantageously dipped into a solution of the thrombolytic agent and then removed to allow the thrombolytic agent to dry thereon. The steps of dipping and drying the base material and the thrombolytic agent is repeated to form a desired concentration or quantity of thrombolytic agent on the base material. The method further includes providing a polymer or a biologically derived material and mixing the thrombolytic agent with the polymer or biologically derived material and applying the mixture to the base material.

Neither this cited section nor the rest of the Fearnot patent teaches the claimed limitations. At most, the Fearnot Patent teaches a stent having a multi-layer coating, each layer including a therapeutic agent (see also FIG. 5 col. 3 lines 47-50).

Therefore, as each and every limitation of amended independent claims 17, 25 and 35 is not disclosed in the Fearnot Patent, claims 17, 25 and 35 cannot be anticipated by the Fearnot Patent.

Claims 18-21 depend from independent claim 17 and include all the elements and limitations of independent claim 17. Therefore, dependent claims 18-21 are allowable over the Fearnot Patent for at least the same reasons as set forth above with respect to independent claim 17. Claims 28-31 depend from independent claim 25 and include all the elements and limitations of independent claim 25. Therefore, dependent claims 28-31 are allowable over the Fearnot Patent for at least the same reasons as set forth above with respect to independent claim 25. Claims 37-38 depend from independent claim 35 and include all the elements and limitations of independent claim 35. Therefore, dependent claims 36-38 are allowable over the Fearnot Patent for at least the same reasons as set forth above with respect to independent claim 35. Claims 22-24, 32-34 and 36 have been cancelled. Claims 37 and 38 were amended merely to correct claim dependency. For these reasons, the withdrawal of the rejection of claims 17-25 and 28-39 under 35 U.S.C. § 102(b) is respectfully requested.

35 U.S.C. §103 Rejections

Claims 26 and 27 have been rejected under 35 U.S.C.§ 103(a) as being unpatentable over Fearnot '299 in view of Guruwaiya (US Patent 6,251,136).

The Applicants traverse this rejection. As the Examiner is well aware, in order to make a *prima facie* case of obviousness under § 103(a), all of the *claimed* elements of the invention must be taught or suggested by the prior art (MPEP § 2143.03). As discussed above, the Fearnot patent does not teach or suggest a stent having at least one thin barrier layer positioned between one or more thin drug-polymer layers, as claimed in independent claim 25. The Guruwaiya patent does not cure this defect. Furthermore, the Fearnot patent in combination with the Guruwaiya patent does not teach or suggest a drug polymer layer having stent having at least one thin barrier layer positioned between one or more thin drug-polymer layers as claimed in amended independent claim 25.

Claims 26 and 27 depend from independent claim 25 and include all of the elements and limitations of independent claim 25 and, thus, are allowable for at least the same reasons as those stated above for claim 25. Furthermore, where an independent claim is non-obvious, any claim depending therefrom is also non-obvious. *See*, MPEP 2143. Applicants, therefore, request the withdrawal of the rejection of dependent claims 26 and 27 under § 103(a).

New claims 40-47 are patentable

Claims 40-43 depend from independent claim 17; claims 44-46 depend from independent claim 25; and claim 47 depends from independent claim 35. Claims 40-47 include all of the limitations of there respective independent claim and, therefore, are allowable over the prior art for at least the same reasons as stated above for independent claims 17, 25 and 35. In addition, claims 40, 44 and 47 are allowable over the cited art because Fearnot alone or in combination with Guruwaiya does not teach or suggest a stent wherein the at least one thin barrier layer comprises a diffusion barrier. For at least this additional reason, claims 40, 44 and 47 are allowable. Support for the new claims may be found at least at page 10 lines 8-9, page 12 lines 7-9 and page 13 lines 19-21.

Conclusion

For the foregoing reasons, Applicant believes all the pending claims are in condition for allowance and should be passed to issue. The Commissioner is hereby authorized to charge any additional fees which may be required under 37 C.F.R. 1.17, or credit any overpayment, to Deposit Account No. 01-2525. If the Examiner feels that a telephone conference would in any way expedite the prosecution of the application, please do not hesitate to call the undersigned at telephone (707) 543-0221.

Respectfully submitted,

/Catherine C. Maresh, Reg. No. 35,268/
Catherine C. Maresh
Registration No. 35,268
Attorney for Applicant

Medtronic Vascular, Inc.
3576 Unocal Place
Santa Rosa, CA 95403
Facsimile No.: (707) 543-5420